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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,557	04/27/2006	Christian Milo	3712036.00719	2772
29157	7590	04/01/2011	EXAMINER	
K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690			STULIL, VERA	
			ART UNIT	PAPER NUMBER
			1781	
			NOTIFICATION DATE	DELIVERY MODE
			04/01/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

Office Action Summary

Application No.

10/595,557

Applicant(s)

MILO ET AL.

Examiner

VERA STULII

Art Unit

1781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 8, 11-18, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8, 11-18, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-940)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date 11/22/2010
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/22/2010 has been entered.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 4, 7, 11, 13-18 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood et al (EP 0791296) for the same reasons as stated in the Final Office action mailed 05/26/2010.

In regard to the rejection of claim 1, it is noted that limitations of claims 9 and 10 have been incorporated in to claim 1. Therefore, claim 1 is rejected from the same reasons as claims 1, 9 and 10 as stated in the Final Office action mailed 05/26/2010.

In regard to the rejection of claim 18, it is noted that limitations of claim 19 have been incorporated in to claim 18. Therefore, claim 18 is rejected from the same reasons as claims 18 and 19 as stated in the Final Office action mailed 05/26/2010.

Claims 3, 5, 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood et al (EP 0791296) in view of Jimenez et al (US 5,736,182) for the same reasons as stated in the Final Office action mailed 05/26/2010.

In regard to the amendment of claim 14 (addition of "without aeration" limitation), it is noted that lack of aeration does not mean the lack of oxygen that may be required for fermentation. Therefore, since aeration is not an essential factor in the fermentation, one of ordinary skill in the art would have been motivated to exclude aeration in order to prevent loss of aroma that is formed as a result of fermentation.

Response to Arguments

Applicant's arguments filed 11/22/2010 have been fully considered but they are not persuasive.

On pages 6 and 7 of the Reply to the Final Office action mailed 05/26/2010, Applicants restate the content of the amended claims and summarize the invention.

In regard to the "less than 0.05% ethanol" argument and production of ethanol during fermentation, it is noted that Wood et al also discloses that the temperature of the fermentation media is reduced before inoculation with microorganisms in order to **reduce production of alcohol** (Col. 3 lines 5-8). Wood et al further discloses that the fermentation temperature may be further reduced to 0-12° C **in order to reduce formation of alcohol due to the fermentation with yeast** (Col. 3 lines 9-13). Wood et al discloses substantially **non-alcoholic beverage (i.e. containing only traces of alcohol)** (Example 5 Col. 5 lines 54-55). Therefore, since Wood et al discloses coffee

beverage base containing only traces of alcohol, and reduction of fermentation temperature to prevent formation of alcohol, the amount of alcohol in the coffee beverage base is expected to be as claimed. Regarding the amount of alcohol in the coffee beverage base, it is noted that although the references do not specifically disclose every possible quantification or characteristic of its product, such as the amount of alcohol in the coffee beverage base, this characteristic would have been expected to be in the claimed range absent any clear and convincing evidence and/or arguments to the contrary. The reference discloses the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of ordinary skill in the art would recognize that the amount of alcohol in the coffee beverage base, among many other characteristics of the product obtained by referenced method, would have been an inherent result of the process disclosed therein. The Patent Office does not possess the facilities to make and test the referenced method and product obtain by such method, and as reasonable reading of the teachings of the reference has been applied to establish the case of obviousness, the burden thus shifts to applicant to demonstrate otherwise.

In any case, since Wood et al discloses control of fermentation by reduction of temperature in order to reduce formation of alcohol and beverage containing only traces of ethanol, one of ordinary skill in the art would have been motivated to control the fermentation temperatures in order to produce a non-alcoholic beverage having alcohol content as recited.

In response to Applicants' arguments regarding the ratio of 2-and 3-methylbutanol over 2-and 3-methylbutanal, the ratio of thioacetates over thiols and foam properties recitations in claims 9-11 and 18-19, it is noted that although the references do not specifically disclose every possible quantification or characteristic of its product, such as the ratio of 2-and 3-methylbutanol over 2-and 3-methylbutanal, the ratio of thioacetates over thiols and foam properties, these characteristics would have been expected to be as claimed absent any clear and convincing evidence and/or arguments to the contrary. The reference discloses the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of ordinary skill in the art would recognize that the ratio of 2-and 3-methylbutanol over 2-and 3-methylbutanal, the ratio of thioacetates over thiols and foam properties, among many other characteristics of the product obtained by referenced method, would have been an inherent result of the process disclosed therein. The Patent Office does not possess the facilities to make and test the referenced method and product obtain by such method, and as reasonable reading of the teachings of the reference has been applied to establish the case of anticipation, the burden thus shifts to applicant to demonstrate otherwise.

In response to Applicants' arguments regarding the lack of aeration, it is noted that lack of aeration does not mean the lack of oxygen that may be required for fermentation. Therefore, since aeration is not an essential factor in the fermentation, one of ordinary skill in the art would have been motivated to exclude aeration in order to prevent loss of aroma that is formed as a result of fermentation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vera Stulii/
Examiner, Art Unit 1781